

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

WAYNE KENNETH AUGÉ, II,

Case No. 14-10443-ta11

Debtor.

THE NORTHERN NEW MEXICO
ORTHOPAEDIC CENTER, P.C.

Plaintiff,

v.

Adv. No. 14-1049-t

WAYNE KENNETH AUGE, individually, and
Wayne K. Auge as trustee of the
COVALENT GLOBAL TRUST U/T/I DATED
12/1/03, AUXESIS HOLDINGS LIMITED
PARTNERSHIP and OPERON INC.,

Defendants.

**MOTION TO COMPEL RESPONSES TO CREDITOR THE NORTHERN NEW
MEXICO ORTHOPAEDIC CENTER, P.C.'S SUBPOENAS TO JOHN AUGE,
SUZANNE CALIENDO AND THOMAS AUGE**

Creditor The Northern New Mexico Orthopaedic Center, P.C. (“NNMOC”), by counsel, moves the Court (i) for an order, pursuant to Fed. R. Civ. P. 45(d)(2)(B)(i), made applicable to this proceeding by Fed. R. Bankr. P. 9016, compelling John Auge, Suzanne Caliendo and Thomas Auge (together, the “**Auge Siblings**”) to fully and completely respond to the *Subpoenas to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)* served upon them on January 29, 2015 (together, the “**Subpoenas**”). In support of this motion, NNMOC states:

1. On January 27, 2015, NNMOC filed the *Notice of Subpoenas*, with copies of the Subpoenas attached thereto (Doc. No. 73). On January 29, 2015, Michael K. Daniels, Esq., accepted service of the Subpoenas by e-mail on behalf of the Auge Siblings. A true and correct copy of the subpoenas is attached hereto as Exhibit A. A true and correct copy of Michael K. Daniels, Esq.'s acceptance of service via e-mail is attached hereto as Exhibit B.

2. The Subpoenas required a response on or before February 13, 2015. See Exhibit A, p. 1, 12, and 23.

3. On February 18, 2015, NNMOC, by counsel, inquired as to whether the Auge Siblings intended to respond to the Subpoenas. On the same date, NNMOC was informed that the Auge Siblings were not ready to respond to the Subpoenas. A true and correct copy of this correspondence is attached hereto as Exhibit C.

4. As of the date and time this Motion was filed, NNMOC had not received a response to the Subpoenas.

5. The Auge Siblings have not requested an extension of time to respond to the Subpoenas.

6. The Auge Siblings have not made any objection to the Subpoenas, and there is no pending Motion to Quash or Motion for Protective Order relating to the Subpoenas.

7. Pursuant to Fed. R. Civ. P. 45(d)(2)(B)(i) “[a]t any time, on notice to the commanded person, the serving party may move...for an order compelling production.”

8. On February 24, 2015, Plaintiff's counsel contacted counsel for the Debtor, Operon and Auxesis, through which NNMOC has been communicating with the Auge Siblings,

and on February 25, 2015, sent a letter to determine if the Auge Siblings would consent in the relief requested herein. The Auge Siblings did not respond.

WHEREFORE, Plaintiff requests the Court to enter an order (i) compelling the Auge Siblings to fully and completely respond to the Subpoenas and for all other just and proper relief.

Respectfully submitted,

ASKEW & MAZEL, LLC

By: s/filed electronically

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This certifies that a copy of the foregoing was served via the CM-ECF notification system to all parties who have entered an appearance, this 3rd day of March, 2015 and by First Class U.S. Mail to:

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/s/ Daniel A. White
Daniel A. White